



**United States  
Department  
of  
Agriculture**

Federal Crop  
Insurance  
Corporation

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DATE: February 11, 2010  
TO: Board of Directors  
Federal Crop Insurance Corporation  
FROM: William J. Murphy /signed/  
Manager  
SUBJECT: Manager's Report  
Exhibit No. 3061

This memorandum serves as the Manager's Report to the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) for the February 11, 2010, meeting.

**Program Update:**

**Comprehensive Information Management System (CIMS) Implementation** – Risk Management Agency (RMA) and Farm Service Agency (FSA) continue to implement CIMS components. CIMS is currently providing consolidated information for 2006 thru 2010 crop years for users from RMA, FSA, Office of the Inspector General (OIG), and participating crop insurance companies. RMA recently added capacity to the system to support providing services to the more than 10,000 State and County FSA users.

CIMS has implemented a SURE Report and an APH Report. FSA State users were granted access in December, 2009, and the FSA County Offices are scheduled to have access by mid February. In the past year, crop insurance companies have submitted over 7.7 million requests for insured producer information. **Rate Methodology Study** – RMA awarded a contract for a comprehensive review of the APH and COMBO rating methodology. The subsequent report was received by RMA and was posted for comment in December, 2009. Comments were received by January 19, and are under review.

One of the key recommendations of the report was that RMA should conduct an in-depth review of historical loss data with special emphasis on the issues of whether all years should be weighted equally, especially the early years; and whether the historical data give a reasonable prediction of future losses. RMA is in the process of contracting for this review.

**Native Sod** - Questions have been raised regarding the impact of the availability of crop insurance on producers' decisions to break out native sod acreage for annual crop production. Current crop insurance regulations do not allow insurance coverage on land that has not been planted and harvested, or insured, in at least one of the three previous crop years unless certain exceptions apply. In some cases, however, crop insurance coverage can be offered by written agreement for acreage newly broken out from native sod.

RMA established a workgroup to evaluate and analyze the impact of insurance coverage by written agreement on newly broken land. The workgroup is reviewing RMA legislative authority, policies, procedures and data to determine whether RMA should amend its insurance coverage for newly broken acreage. The workgroup is concluding its analysis and anticipates its findings will be presented to the RMA Administrator by the end of February, 2010.

**Climate Study** – RMA has received the final report for the Climate Change Impact on Crop Insurance contract. The deliverable is currently being reviewed by RMA staff. The contract was initiated due to a GAO report that directed RMA to look at the possible implications of climate change on the Federal crop insurance program.

**Dedicated Energy Crops** – RMA has prepared a statement of work for a contracted study on Dedicated Energy Crops. The objective of this contract is to obtain general information on commercially grown dedicated energy crops to make a decision on what crops to study further. If warranted, another contract will be initiated for selected crops to determine the feasibility and issues related to insuring those dedicated energy crops selected.

**Skip Row Cropping Practices** – The 2008 Farm Bill directed RMA to conduct a study into needed modifications of policies to insure corn and sorghum produced in certain areas of the Central Great Plains using skip row cropping practices. The draft evaluation report was delivered to RMA on Jan 7, 2010, and is currently under review.

#### **Regulatory Update:**

**COMBO Final Rule** — The final rule for the Common Crop Insurance Policy that will provide revenue protection and yield protection within one Basic Provisions and the applicable Crop Provisions that replace the Crop Revenue Coverage, Income Protection, Indexed Income Protection and Revenue Assurance Plans of Insurance has cleared all necessary Department offices and is now at the Office of the Secretary for clearance and submission to the Office of Management and Budget (OMB). The final rule is planned for implementation and rollout for the 2011 crop year.

**Tobacco Crop Insurance** — RMA Product Management staff met with representatives of RMA's Raleigh, Jackson and Valdosta Regional Offices, RMA's Eastern Regional Compliance Office and the Office of the Inspector General in Raleigh North Carolina, on February 2nd and 3rd, 2010. The purpose of the meeting was to discuss program and compliance vulnerabilities within the tobacco crop insurance program and to formulate possible solutions to address such vulnerabilities.

**Apple Crop Provisions** – The proposed rule to amend the Apple Crop Provisions was published in the Federal Register on September 8, 2009. The public was afforded 60 days to submit written comments after the regulation was published in the Federal Register. Based on comments received and specific requests to extend the comment period, FCIC published a notice in the Federal Register on November 17, 2009, extending the initial 60-day comment period for an additional 30 days, until December 17, 2009. The Product Administration and Standards Division is currently preparing responses to public comments.

**IT Projects and Activities** — The Information Technology Modernization (ITM) project, RMA’s technology reengineering initiative, continues to make progress in implementing the COMBO policy for 2011. Significant achievements include production deployment of the majority of the actuarial tools required to generate the 2011 insurance offers. Rollover of the 2010 crop year actuarial data has been accomplished and work has begun on the 4/30 crops in preparation for the first filing of the year. User acceptance testing is ongoing and identified defects are being resolved. In addition to the internal RMA testing, the COMBO Actuarial Data Master and the corporate calculation web service for premium calculations were released to participating crop insurance companies to begin testing with their systems in October, 2009. The public version of the Actuarial Information Browser and Cost Estimator are on schedule to be released in March. Full integration of the actuarial toolset will occur in April. This includes all GIS tools and final iteration of the remaining portions of actuarial applications. Work will commence on Phase II of the project in April and will include accounting, corporate reporting and loading of historical rate information.

### **Recent Compliance Investigation, Appeals, and Sanction Activity**

**Sanction/Disqualification/Civil Fine** — FCIA Docket No.: 08-0153, Washington County, Virginia On behalf of Risk Management Agency the Appeals and Litigation Staff (A&L) filed a Complaint with the Administrative Law Judge (ALJ) in this matter. The Complaint alleged that for crop year 2003 the producer willfully provided false and inaccurate information regarding planting dates of his insured burley tobacco. After considering all of the evidence, including testimony and the exhibits the following Order was rendered in November: The producer will be disqualified for a period of five years and a civil fine of \$24,421 imposed.

**Litigation** — Acceptance Insurance companies, Inc (Acceptance). v United States. On October 1, 2009, the United States Court of Appeals for the Federal Circuit decided in favor of RMA regarding a suit brought by Acceptance in relation to the failure of American Growers Insurance Company in 2002. In brief, the Court held that when the RMA rejected the proposed sale of American Growers’ policies to another company, the government did not actually “take” American Growers. Rather, Acceptance still maintained possession of American Growers and held the same property interest as it had prior to the RMA’s rejection—a property interest that included having American Growers subject to the coverage and capital requirements of the pertinent crop insurance regulations. Put another way, when RMA rejected the proposed sale, Acceptance possessed no more or no less of a property interest in American Growers than it did prior to the RMA’s rejection. In its conclusion, the Appeals Court held that contrary to Acceptance’s arguments, when the RMA rejected the proposed sale, it did not actually take American Growers’ insurance policy portfolio. Rather, Acceptance, through its ownership of American Growers, retained possession of the policies, but was barred from selling them to a particular buyer. As a result, it was prevented from realizing a business expectation. Acceptance did not have a cognizable property interest for Fifth Amendment purposes in the ability to freely transfer American Growers’ portfolio of insurance policies. Thus, there was no cognizable property interest that could be “taken” when the RMA rejected the proposed sale. The Appeals Court affirmed the decision of the Court of Federal Claims that dismissed Acceptance’s takings claim. RMA wishes to acknowledge the exceptional work that was done by the USDA, Office of General Counsel and Department of Justice attorney’s assigned to this case throughout this

litigation. UPDATE - Compliance was advised by the Department of Justice in January that Acceptance has filed paperwork to initiate a review of the Court of Appeals decision by the United States Supreme Court.

**Civil Actions** — In early December, Goodson Farms of Hillsborough County, Florida, settled civil claims surrounding improper indemnities received for insured 2001-2004 crop year peppers. The United States held that the defendants concealed income from the cash sales of bell peppers and, as a result, received inflated crop insurance payments under their multi-peril crop insurance policy. As part of the agreement, the defendants agreed to pay \$1.1 million to the U.S. Attorney's Office for the Middle District of Florida to be transferred to the Risk Management Agency. The criminal complaints against this farm and associated entities had been settled previously.

**Criminal Actions** —The Department of Justice issued a press release on December 8, 2009, regarding two Wilson County, North Carolina individuals, one a tobacco producer and the other associated with the tobacco warehouse, who were sentenced for their participation in a crop insurance fraud and money laundering scheme. Both have cooperated in the on-going investigation of Federal crop insurance fraud in Eastern North Carolina. The producer was sentenced to 5 years probation and a fine of \$50,000, and the warehouse associate was sentenced to 3 years probation with a fine of \$25,000.

**Program Review** — Crop Year 2005 - Multiple Counties, Texas - Corn – On January 5, 2010, the Southern Regional Compliance Office issued Reports of Initial Findings for combined indemnity overpayments of \$667,511 to the fourth of seven crop insurance companies involved in the review of aflatoxin corn claims in multiple North and Central Texas Counties. Compliance cited at least one of five errors for each policy identified which negated the use of a quality adjustment factor. Additional actions by the Civil Division of the Department of Justice are still pending in this case.

**National Appeals Division (NAD)** — Appeals and Litigation staff prepared this case to request a NAD Director's Review of a hearing officer's decision. The producer failed to pay the total premium due for the 2009 crop year by the termination date of July 31, 2009, as required by the insurance policy. The NAD Hearing Officer determined that the producer did pay their premium by the due date but did not pay the interest or fees involved and ruled that RMA erred in adding the producer to the Ineligible Tracking System based on the fact that they did not pay the interest and fees. RMA believes the Hearing Officer erred in his determination because the regulations and policy specifically state that the interest and fees are considered part of the premium and have to be paid as required by the policy by the termination date of July 31, 2009.

**Criminal Actions** — Wilson County, North Carolina – On January 5, 2010, three North Carolina producers were sentenced for their participation in a tobacco crop insurance fraud and money-laundering scheme. All three defendants cooperated in the on-going investigation of Federal crop insurance fraud in Eastern North Carolina. Each of the producers was sentenced to 5 years probation. Fines for the three individuals totaled \$39,280. Two of the producers were ordered to pay restitution totaling \$198,916.

**Supplemental Revenue Assistance Program (SURE)** — RMA Compliance began receiving

SURE program referrals from FSA in January. Since FSA relies on crop insurance program data to calculate payments under SURE, FSA is in a position to discover reporting discrepancies while reviewing producer applications. We expect that entity, reported acreage, and production number discrepancies will constitute the majority of the reports similar to our experience with the Crop Disaster Programs.

**Current Crop Disaster Program (CDP) Referrals** — RMA continues to work to resolve the 6,761 Crop Disaster Program referrals received to date from Farm Service Agency offices. About half of these referrals result from policyholders reporting one entity to RMA and another to FSA. These referrals are the result of FSA identifying discrepancies noted between downloaded 2005, 2006, and 2007 crop year insurance data and data certified for farm programs at FSA.

**Final Findings Issued Since the November Board Meeting** — Since the November Board meeting Compliance has issued final findings to AIPs for the following amounts: premium overstatements \$263,173; indemnity overpayments \$3,151,557; premium understatements \$1,776; indemnity underpayments \$1,801; and replants \$2,356. During this period RMA received \$238,196 in criminal recoveries and \$1,100,000 in civil actions pertaining to the Federal crop insurance program. Compliance review activities also resulted in the non-payment or waiver of questioned claims totaling \$108,949.